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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,500	09/19/2003	Robert Michael Trotter	TROT1	8974

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TROUTMAN SANDERS LLP  
BANK OF AMERICA PLAZA, SUITE 5200  
600 PEACHTREE STREET, NE  
ATLANTA, GA 30308-2216

EXAMINER
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GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/666,500

**Applicant(s)**

TROTTER, ROBERT MICHAEL

**Examiner**

Brian E. Glessner

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/14/05</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The following office action is in response to the amendment and remarks filed on March 10, 2005. Claims 1-10 and 13 are pending in the application. Claims 1-10 and 13 are rejected as set forth below.

#### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: A and B are not in the figures. Also, reference number 330 in figure 2 should be 320 according to the specification and the floor is not shown. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The limitation that said waterproofing system's open space

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or conduit is located at the subfloor area in the proximity of the location where said wall rests on said foundation is not found in the specification. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 10, and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Some of the claims contain the limitation that the air is communicated through said waterproofing system's open space or conduit, and to the foundation and soil in the area proximate to said foundation. Other claims contain the limitations that the system's open space or conduit is for draining water from below the floor of said substructure, and that the conduit or open space is located underneath the floor. These limitations were not supported in the original disclosure or drawings. The drawings do not show a floor on top of the subfloor. Therefore, the limitation that the open space or conduit is located under the floor is not supported by the original disclosure. These claims will be examined as "best understood" until further correction is provided.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "said structural waterproofing system's open space or conduit" in lines 9 and 10. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Beck (3,975,467).

In regard to claim 1, Beck discloses a drying system for a foundation waterproofing system, said waterproofing system includes an open space or conduit 6, 10 for receiving and communicating water away from the foundation of a structure, the drying system comprising: an air inlet, i.e. the opening connecting the conduit to the duct 30, in communication with said waterproofing system for communicating air through said waterproofing system's open space or conduit, and to the foundation and soil in the area proximate to said foundation, an air outlet, i.e. the opening connecting the conduit to the duct 31, in fluid communication with said waterproofing system's open space or conduit, and an air circulator 38 for circulating air between said air inlet and said air outlet throughout said waterproofing system's open space or conduit, wherein the circulated air is capable of removing moisture and gas from said foundation and also from said waterproofing system through said air outlet. This is so because the moisture seeps through said walls and into said basement. Then, the moisture is removed with

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the waterproofing system. Thus, the foundation area and basement will have the moisture removed therefrom.

In regard to claim 13, Beck discloses a method for drying structural waterproofing system of a structure having a floor 4 and at least one wall 3, said wall resting on a foundation 5, the structural waterproofing system located in proximity of said foundation, the method comprising the steps of providing an air circulator 38 in fluid communication with said structural waterproofing system, and circulating air through an open space or conduit of said structural waterproofing system, and removing moisture and gas from said structure and system, wherein moisture and gas are transported away from said waterproofing system and the foundation.

***Claim Rejections - 35 USC § 103***

Claims 2-5 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck (3,975,467) and further in view of Mendola (4,185,429).

In regard to claim 10, Beck discloses a drying system for structural waterproofing system for a structure having a floor 2 and at least one wall 3, said wall resting on a foundation 5, the drying system comprising a waterproofing system's open space or conduit 6, 10 for draining water from the enclosure, said waterproofing system's open space or conduit having a periphery defining an interior; an air inlet, i.e. the opening connecting the conduit to the duct 30, in fluid communication with said interior of said waterproofing system's open space or conduit, an air outlet, i.e. the opening connecting the conduit to the duct 31, in fluid communication with said waterproofing system's open space or conduit, and an air circulator 38 for circulating air between said air inlet and

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said air outlet throughout said waterproofing system's open space or conduit, and wherein the circulated air removes moisture and gas from said waterproofing system's open space or conduit, foundation and exits through said air outlet. This is so because the moisture seeps through said walls and into said basement. Then, the moisture is removed with the waterproofing system. Thus, the foundation area and basement will have the moisture removed therefrom. Beck does not specifically disclose that said waterproofing system's open space or conduit is located at the subfloor area in proximity of the location where said wall rests on said foundation. Mendola teaches that it is known to provide a waterproofing system's open space or conduit at a subfloor area where a wall rests on its foundation, figure 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the open space or conduit in the subfloor region, because by recessing the drain segments into the subfloor are, they will be less obtrusive. Therefore, the room will have a more pleasing esthetic appearance. Further, by having the open space or conduit located at the subfloor level, any water that may be spilled on the floor, will more easily drain into the open space or conduit.

In regard to claims 2 and 5, Beck in view of Mendola disclose the basic claimed invention, wherein said air inlet is in communication with the interior of said enclosure and wherein said air circulator 38 is located proximal to said second end of said air duct. The inlet is in communication with the interior of the enclosure at least through hose 27. Beck does not specifically disclose that said air circulator draws air from said interior of said enclosure through said drainage conduit. However, this is a functional statement.

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Therefore, as long as Beck's circulator is capable of performing the claimed function, it meets the claimed limitations. Therefore, since one having ordinary skill in the art knows that blowers often blow in two directions, it is known that Beck's blower is capable of performing the claimed function. Therefore, Beck's blower meets the claimed function. Further, this would be capable of allowing air to be drawn into the system through said hose.

In regard to claim 3, Beck in view of Mendola disclose the basic claimed invention, wherein said waterproofing system's open space or conduit has a remote first end, i.e. the end near duct 30, and an opposing second end, i.e. the end near duct 31, said air inlet located in the proximity of said remote first end of said waterproofing system's open space or conduit and said air outlet located in the proximity of said opposing second end of said waterproofing system's open space or conduit, wherein air is circulated through the interior of said waterproofing system's open space or conduit and to the foundation.

In regard to claim 4, Beck in view of Mendola disclose the basic claimed invention, further comprising an air duct 30 having first and second ends, wherein said first end communicates with said air outlet of said waterproofing system's open space or conduit and said second end communicates with the exterior of said enclosure. The examiner would like to point out that since the duct is connected to the conduit, the duct is in communication with everything the conduit is in communication with.

In regard to claim 8, Beck and Mendola disclose the basic claimed invention, wherein the system further comprises a humidistat 40 for sensing the amount of



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moisture in said waterproofing system's open space or conduit or said enclosure, said humidistat activating the operation of said air circulator.

In regard to claim 9, Beck in view of Mendola discloses the basic claimed invention, except for specifically disclosing the use of a timer for programming the operation of said air circulator. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a timer into Beck's invention, because the use of timers to control blowing devices is notoriously well known in the art. The timer eliminates the need for a person to control when and how long the blower will run. Further, the humidistat functions in a similar manner as a timer because it will control when the blower unit will turn on and off.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beck (3,975,467) in view of Mendola (4,185,429) and further in view of Dextras (2002/0073628).

In regard to claim 6, Beck and Mendola disclose the basic claimed invention except for specifically disclosing that said air circulator is a fan. Dextras teaches that it is known to use a fan to circulate air through a building ventilation system. It would have been obvious to one having ordinary skill in the art to use a fan to circulate the air through Beck's invention, because a fan will provide sufficient airflow through the duct and conduit system. Further, most fans can be used to blow air in two directions. Therefore, one could use the fan to suck the air out of the system, or to blow the air through the system.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beck (3,975,467) in view of Larimore (6,279,279).

In regard to claim 7, Beck and Mendola disclose the basic claimed invention except for specifically disclosing the use of a dehumidifier for dehumidifying the air circulated by said air circulator. Larimore teaches that it is known to use a dehumidifier to dehumidify circulated air in a building structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a dehumidifier in Beck's invention, because, as is known in the art, the dehumidifier will remove moisture from the air in Beck's enclosure. Therefore, one will not have to worry about mildew and mold growing in the enclosure.

#### ***Response to Amendment***

The examiner would like to point out that the amendment filed does not conform to the current standards. The claim identifiers for claims 6, 7, and 9 are not correct. The applicant should have used the (Currently Amended) instead of (Original) because the claims were amended.

#### ***Response to Arguments***

Applicant's arguments filed March 10, 2005 have been fully considered but they are not persuasive.

In response to the applicant's argument that Beck does not show a waterproof drying system as per column 1, lines 30-41, the examiner respectfully disagrees. This part of Beck's specification merely talks about prior art waterproofing systems.

Although Beck's system might not be like the prior art systems, Beck never states that

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his system is not a waterproof drying system. In fact, Beck clearly states that his system is designed to remove moisture from the structure, column 5, lines 25-32.

The applicant also argues that Beck does not address the need for and the removal of water around the soil on which the soil rests. The examiner would like to point out that Beck clearly shows weep holes 22. These will allow water from the surrounding soil to pass through the wall into the waterproofing system. From there, the water will be evaporated and removed from the system. Therefore, it is quite clear that the water from the soil will be removed by Beck's system.

The applicant further argues that Beck does not address the same issues that the applicant addresses, i.e. soil loosening and the footing shifting. Although this may be true, the examiner would like to point out that these are functional limitations that are not even found in the claim. Therefore, the applicant is arguing limitations that are not claimed.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 571-272-6843. The examiner can normally be reached on Monday through Thursday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Brian E. Glessner  
Primary Examiner  
Art Unit 3635

B.G.  
May 11, 2005